

In the Matter of DOUGLAS PUBLIC SERVICE CORP. and OIL WORKERS
INTERNATIONAL UNION, C I O

Baldwin, Haspel, Molony & Lang, by *Mr. L. A. Molony*, of New Orleans, La., for the Company.

Messrs. F. H. Mitchell, of Fort Worth, Tex., and *L. L. Hoste*, of New Orleans, La., for the C. I. O.

Mr. William L. Donnels, of New Orleans, La., for the A. F. L.

Mr. Bruce C. Heath, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon a petition duly filed by Oil Workers International Union, C I O, herein called the C. I. O., alleging that a question affecting commerce had arisen concerning the representation of employees of Douglas Public Service Corporation of New Orleans, Louisiana, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before LeRoy Marceau, Trial Examiner. Said hearing was held at New Orleans, Louisiana, on April 3, 1945. The Company, C. I. O., and International Union of Operating Engineers, A F L, intervenor, herein called Engineers appeared and participated. All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. At the commencement of the hearing the Company moved that the petition of the C. I. O. be dismissed on the ground that an existing contract between the Company and the Engineers constitutes a bar to a present determination of representatives. The Trial Examiner referred the motion to the Board. For reasons set forth in Section III, *infra*, said motion is hereby granted. All parties were afforded an opportunity to file briefs with the Board.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

The Douglas Public Service Corp. is a Louisiana corporation and maintains its principal office at 118 N. Front Street, New Orleans, Louisiana. In and about New Orleans, the Company operates commercial warehouses for general storage purposes. It also operates liquid storage terminals at Marrero, Algiers, Avondale, and Chalmette, Louisiana. At the terminals, the Company stores and handles crude oil, vegetable oil, whale oil, alcohol and fuel oil, soy bean oil, and several other types of liquids. During a year, the Company receives these oil products valued in excess of \$50,000 from points outside the State of Louisiana, and during the same period it delivers and ships these products valued in excess of \$50,000 to points outside the State of Louisiana.

The Company admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

Oil Workers International Union, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

International Union of Operating Engineers affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

III. THE ALLEGED QUESTION CONCERNING REPRESENTATION

On May 6, 1942, the Engineers and the Company entered into a closed-shop contract for a period of 2 years. On May 5, 1944, the parties executed a second 2-year contract which became effective on June 1, 1944. This contract contains the following provision:

The agreement to remain in full force and effect from June 1, 1944, through September 30, 1946. Either party desiring a change in wage provisions or working conditions after June 1, 1945, must notify the other in writing of such a desire ninety (90) days prior to June 1, 1945. Either party desiring a change in wage provision or working conditions subsequent to June 1, 1945, must notify the other party in writing of such a desire ninety (90) days prior to June 1, 1946.

Neither the Engineers nor the Company had requested in writing any changes or modification prior to March 1, 1945, the beginning of the 90-day period provided for in the contract. The C. I. O. filed its petition herein on November 14, 1944.

Both the Company and the Engineers maintain that the present contract constitutes a bar to this proceeding. The C. I. O., however, contends that the contract is no bar since the Engineers is no longer capable of functioning as the bargaining representative. Tending to support the C. I. O.'s contention, the evidence reveals that since May 1944 the Engineers has held no regular meetings, and has not regularly collected dues from all its members or enforced its closed-shop contract. It further appears that a number of employees have presented a petition to the Company protecting the deduction of dues and stating that its signers did not desire to be represented by the Engineers. Although there may be a considerable group of employees dissatisfied with the representation accorded them by the Engineers,¹ the record discloses that the Engineers has not ceased to function as a bargaining representative of the Company's employees. It has continued to settle grievances, has secured wage adjustments for the employees, and has held some meeting with groups of the employees at the various terminals. Although the Engineers agreed with the Company not to invoke the closed-shop provision of its contract for the period of the war, it appears that it did so because of the labor shortage and its pledge of non-stoppage of vital war work. We are, therefore, of the opinion that the Engineers is still a functioning labor organization and capable of administering its contract.²

The C. I. O. further contends that the contract constitutes no bar to a determination of representatives at this time because it filed its petition prior to commencement of the 90-day period provided for in the modification provision contained in the Engineer's agreement, as set forth above. Although the contract provides that substantial modifications may be effected therein by mutual agreement at specified periods during the term of the contract upon 90-day notice, it nowhere provides that such modifications, or the negotiation thereof, shall in any way alter the original termination date set forth therein, or enables either party, without the consent of the other, to terminate their contractual relationship. As indicated above, neither the Engineers nor the Company gave notice pursuant to the contract provision nor did they otherwise enter into negotiations for changes in the contract. The Board has held that even where negotiations have been entered into or modifications effected pursuant to such a contract provision and where no attempt was made to renew or extend the term of the contract, such negotiations or modifications would not operate to validate the representation claim of a rival union which was prematurely

¹ The Field Examiner reported that the C. I. O. submitted 29 application cards, all of which bore the date of November 1944. The cards were not checked against the Company's pay roll. There are 42 employees in the alleged appropriate unit.

² See *Matter of White Bros. Smelting Corp.*, 61 N. L. R. B. 340. See also *Story & Clark Piano Co.*, 59 N. L. R. B. 185.

presented in advance of the contract's normal expiration date.³ The contract between the Engineers and the Company will not expire until September 30, 1946. Accordingly, we find that the petition of the C. I. O. is untimely and that the contract is a bar to a present determination of representatives.

In view of our findings above, we conclude that no question has arisen concerning the representation of the employees of the Company within the meaning of Section 9 (c) of the National Labor Relations Act. We shall dismiss the petition on the grounds set forth, and we find it unnecessary to discuss the matter of the unit. We shall dismiss the petition of the C. I. O. without prejudice to the right to file a new petition in seasonable time prior to September 30, 1946.

ORDER

Upon the basis of the foregoing facts and the entire record in the case, the National Labor Relations Board hereby orders that the petition for investigation and certification of representatives of the employees of the Douglas Public Service Corp., New Orleans, Louisiana, filed by Oil Workers International Union, C. I. O., be, and is, hereby dismissed.

³ See *Matter of Green Bay Drop Forge Co*, 57 N L R B 1417, *Matter of Magnolia Petroleum Co*, 57 N L R B 1714; *Story & Clark Piano Co*, *supra*